
(2011) 12 MP CK 0098
In the Madhya Pradesh High Court
Case No : Writ Petition No. 10795 of 2010

Shobha Solanki

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Citation : (2012) 2 MPJR 145

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Judgement

S.C. Sharma, J.—In the present case, the petitioner is holding the substantive post of Sister Tutor which is certainly a post under the Nursing Cadre as provided under Schedule I of the MP Public Health & Family Welfare Department (Directorate of Health Services, Class III Nurses Recruitment) Rules, 1989. The next promotional post of the petitioner is Sister Tutor (Nursing education). Not only this, the amendment notified by the State Government dt. 6/5/11 also caters to such a contingency and the Explanation to Section 2 reads as under :

Explanation.-For the purpose of this clause a "Government nurse" means a Government servant by whatever designation called, appointed to a post mentioned under Group "C" - Nursing Services in Schedule -1 of the Madhya Pradesh Public Health and Family Welfare (Gazetted) Services Recruitment Rules, 2007 and under Schedule - I of the Madhya Pradesh Public Health and Family Welfare Department (Directorate of Health Services) Class III Nursing Service Recruitment Rules, 1989, for the purpose of nursing in accordance with the recruitment rules applicable to such appointment, provided he holds a lien on a nursing post of an institution under the Public Health and Family. Welfare Department. (b) The provision of clause (a) shall be deemed to have come into force from 31st October, 2009

The aforesaid explanation makes it very clear that a Government Nurse means a Government servant by whatsoever designation called, appointed to a post mentioned under group C under the schedule appended to the Recruitment Rules

of 2007 or under the Rules of 1989, meaning thereby, a sister tutor who is posted even in the Regional Health & Family Welfare Training Centre is entitled to continue upto the age of 65 years. The amendment has come into force w.e.f. 31st August 2010 and it is an admitted fact that the petitioner was very much in service on 31/8/2010.

2. Resultantly, as the petitioner was in service on 31st August, 2010 though on account of an order passed by this court permitting her to continue upto 62 years, the fact remains that on the date the law was made applicable to sister tutors, she was very much in the service of the State Government and therefore by virtue of the amendment she is entitled to continue upto the age of 65 years. The petitioner, in the present case, has attained the age of 60 years prior to 31/10/2010 and all other identically placed employees (Government Nurses) who have completed 60 years of age on or before 31/10/2009 were superannuated by respondent State on completion of 60 years of age as there was no such amendment in force at the relevant point of time. It is a mere chance that the present petitioner, because she was posted in Regional Health & Family Welfare Training Centre was granted a relief by this Court to continue upto the age of 62 years by treating her as a Teacher and while she was continuing as a Teacher in the Regional Health & Family Welfare Training Centre, MP Shashikya Sevak (Adhivarshiki Ayu) Sanshodhan Adhiniyam, 2011 has been enacted and therefore this Court is of the considered opinion that in the peculiar facts and circumstances of the case, as the petitioner is now being permitted to continue upto the age of 65 years, she will not be entitled for backwages. However, she will be entitled to continue upto the age of 65 years as she was very much in Government service on 31st August 2010. Respondents are directed to reinstate the petitioner forthwith and the petitioner shall be entitled for all consequential benefits except backwages as she has not worked on the post in question during the pendency of the present petition.